

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In re:

5 08-13555(JMP)

6 LEHMAN BROTHERS HOLDINGS INC., (Jointly Administered)

7 et al.,

8 Debtors.

9 - - - - - x

10 In re:

11 08-01420(JMP)(SIPA)

12 LEHMAN BROTHERS INC.,

13 Debtor.

14 - - - - - x

15

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 December 19, 2013

21 10:05 AM

22

23 B E F O R E :

24 HON JAMES M. PECK

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Debtors' One Hundred Seventeenth Omnibus
2 Objection to Claims [ECF No. 15363]

3
4 Hearing re: Debtors' Two Hundred Fifty-Fourth Omnibus
5 Objection to Claims [ECF No. 25059]

6
7 Hearing re: Debtors' Two Hundred and Sixty-Seventh Omnibus
8 Objection to Claims [ECF no. 26087]

9
10 Hearing re: Four Hundred Twenty-Ninth Omnibus Objection to
11 Claims [ECF No. 39355]

12
13 Hearing re: Motion of EFETnet B.V. to Authorize Late-Filed
14 Proof of Claim and/or Permit Amendment of Informal Proof of
15 Claim Against Lehman Brothers Commodity Services, Inc. [ECF
16 No. 40004]

17
18 Hearing re: Thirteenth Application of Hughes Hubbard & Reed
19 LLP for Allowance of Interim Compensation for Services
20 Rendered and Reimbursement of Actual and Necessary Expenses
21 Incurred from March 1, 2013 through June 30, 2013 [LBI ECF
22 No. 7481]

23
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25 Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning.

3 MR. KOBAK: Good morning, Your Honor, James Kobak,
4 Hughes Hubbard & Reed on behalf of Mr. Giddens, the SIPA
5 Trustee.

6 Your Honor, we have one matter on the calendar for
7 this morning, which is our thirteenth interim fee
8 application.

9 The -- and I would like to say one thing when we
10 conclude that if it's all right with Your Honor.

11 THE COURT: Sure.

12 MR. KOBAK: Your Honor, the period covered by this
13 application is March to June of this year, a four-month
14 period, during which we expended approximately 24,470 hours
15 of services. Several very important things were
16 accomplished during this period, including the final
17 settlements with Libby and with LBHI and it's related
18 entities, the allocation motion, and those things together
19 have put us in the position where we're able to pay
20 customers 100 percent, which is a great achievement I think
21 as everyone agrees.

22 Also several important customer matters were
23 briefed and decided during the period, including the Repo
24 decision and the Barclays appeal was briefed and argued in
25 the Second Circuit.

1 Our application has been reviewed by Mr. Caputo
2 and his colleagues at SIPC. As a result of that we have
3 taken certain write off -- we did certain write offs of our
4 own and additional write offs as a result of that review.

5 Our application reflects a -- our customary ten
6 percent discount, also includes a holdback of ten percent.

7 As you know SIPC's approval is entitled to great
8 deference, and unless Your Honor has any questions I would
9 move that our application be approved.

10 THE COURT: It's approved and I like to give
11 SIPC's review great deference.

12 MR. KOBAK: So the one other matter I wanted to
13 mention was of course we've read the announcement of Your
14 Honor's retirement with great interest, and I wanted to just
15 take this opportunity to express my gratitude, the trustee's
16 gratitude, I think indirectly the gratitude of all our
17 customers and creditors for the efficient and effective way
18 this complex and sometimes frustrating proceeding has been
19 administered by Your Honor.

20 I think the case is in good shape for Judge
21 Chaplin to continue, and we all wish you well on your
22 retirement.

23 THE COURT: Thank you very much, I appreciate
24 those comments.

25 MR. KOBAK: Thank you, Your Honor.

1 THE COURT: I think that ends this portion of the
2 agenda, so if you wish to be excused you may --

3 MR. KOBAK: If we may, Your Honor.

4 THE COURT: -- and I wish you all a happy holiday
5 season and a good New Year.

6 UNIDENTIFIED SPEAKER: Same. Happy holidays.

7 UNIDENTIFIED SPEAKER: Happy New Year.

8 (Pause)

9 THE COURT: Good morning, Mr. Miller, how are you?

10 MR. MILLER: Good morning, Your Honor. I'm fine,
11 thank you.

12 May it please the Court, I'm Ralph Miller with
13 Weil, Gotshal & Manges here on behalf of Lehman Brothers
14 Holdings Inc., which I will call LBHI or the plan
15 administrator.

16 Your Honor, the first four items on the agenda
17 deal with eight specific claims from the one hundred and
18 seventeenth, two hundred and fifty-fourth, two hundred and
19 sixty-seventh, and four hundred and twenty-ninth objection.

20 The original notice was for 11 claims, but 2
21 claims, 1681 and 15580 have been adjourned by agreement, and
22 claim 33549 was withdrawn by the claimant.

23 The legal issue in all of these claims is the same
24 as the issue that we considered in a hearing on
25 November 22nd.

1 Specifically that legal issue is the standing of
2 LBI employees in the brokerage business of Lehman Brothers
3 Inc. to bring compensation claims against LBHI based on a
4 group of theories that we characterize as alter ego, veil
5 piercing, or similar. This includes claims of under
6 capitalization, domination of the subsidiary by the parent,
7 or the status of LBI has a wholly-owned subsidiary.

8 Now while some of these claimants have phrased
9 their grounds for relief in slightly different ways, the
10 plan administrator believes that the results should be
11 exactly the same as your ruling on November 22nd, and we ask
12 that these be denied.

13 And it might be helpful, Your Honor, if we got
14 appearances to see who else is here if we have -- since
15 we've not already done so.

16 THE COURT: Let's do that. We'll start with
17 people who are in the courtroom. Are there any individuals
18 or their attorneys present in the courtroom that are
19 claimants affected by the proposed relief sought by the plan
20 administrator today? There's no response as to people in
21 the courtroom.

22 Let me ask to the extent that there are people
23 participating in this hearing through CourtCall, if there
24 are any individuals or counsel participating on the
25 telephone who are either claimants or representing claimants

1 affected by the proposed relief? There's no response.

2 MR. MILLER: All right, thank you, Your Honor.

3 I think that's helpful, because I wanted to assure
4 the Court that we made all of the claimants aware of your
5 November 22nd ruling by sending them courtesy copies of your
6 orders and the transcript and a claims form if they wanted
7 to withdraw their claim.

8 One claimant represented by a lawyer has asked to
9 have his claim adjourned because the lawyer was unable to
10 consult with his client on this withdrawal issue. One pro
11 se claimant did withdraw the claim. And one pro se claimant
12 asked for an adjournment by reason of illness in his family,
13 and of course LBHI agreed to that, that was Mr. Stipo,
14 15580.

15 We think the eight remaining claimants are pro se.
16 We recognize that they may not be choosing to go forward.
17 There was one claimant that originally had other counsel
18 listed on the claim form, but when we called that counsel
19 listed we were advised the law firm no longer represented
20 that claimant. So we believe that the other eight are all
21 pro se.

22 As I understand it there has been no communication
23 from any of the other eight claimants. We do have
24 affidavits of service available to show that they received
25 notice.

1 Very briefly, Your Honor, as the Court said in the
2 November 22nd hearing, quote:

3 "The employees of LBI have whatever rights they
4 have in that proceeding, they have no rights in the LBHI
5 case unless they of course have other grounds to assert
6 claims other than their status as LBI employees."

7 We believe that governs.

8 The claimants before the Court today have not
9 denied that they worked as LBI employees. Although they
10 have phrased their claims in several ways they're all
11 variations of a claim that LBHI should be responsible for
12 the debts of its subsidiary.

13 Paragraphs 5 through 15 of our reply contains
14 summaries of the various theories asserted, they include
15 three of the claims merely relying on the status of LBI as a
16 wholly-owned subsidiary. Those would be the Abernathy claim
17 described in paragraph 5, the Newhouse claim in paragraph 7,
18 and the Oh, that's O-H claim in paragraphs 9 and 10, the
19 Murray claim described in paragraph 11 asserts that quote,
20 "LBHI as for all intents and purposes the alter ego of LBI."
21 Close quote. The Nehman claim described in paragraph 9
22 states there was a "strong bond" between LBI and LBHI when
23 compensation plans were established, and the Tilles claim,
24 summarized in paragraph 14, asserts that LBHI "managed and
25 completely dominated LBI causing it to operate without

1 adequate capital to maintain its operations."

2 Although only one of these remaining claims
3 actually uses the term alter ego, they all rest solely on
4 legal theories that arise from the general corporate
5 relationship between LBI and LBHI, they don't have any
6 specific claims that they were employees directly of LBHI,
7 although they had dealings with LBHI, and thus the SIPA
8 trustee would have exclusive standing under Second Circuit
9 precedent that is in the briefing that we discussed on the
10 22nd to assert these claims.

11 And as the record shows the SIPA trustee has
12 released LBHI in a settlement from all claims of this type.

13 A number of these claimants, not all of them, have
14 in fact made claims in the LBI bankruptcy, which is public
15 record.

16 For these reasons LBHI as the plan administrator
17 respectfully requests that these eight objections should be
18 granted, and we have submitted an order for that purpose for
19 the Court's consideration.

20 THE COURT: Just a point of clarification on that
21 last comment you made about quote, "a number of the
22 employees," close quote, have made claims in the LBI SIPA
23 proceeding. Do we know if all of the affected claimants
24 have in effect made claims --

25 MR. MILLER: We don't --

1 THE COURT: -- in LBI as well as claims in the
2 LBHI case?

3 MR. MILLER: We don't believe they all have, Your
4 Honor. We know some of them have and have had those claims
5 allowed for amounts very close to what they claimed.

6 I have a summary I believe of the status if you'd
7 like for me to go over what I do know about the claimants,
8 Your Honor.

9 THE COURT: It doesn't affect the outcome, I'm
10 just interesting in knowing whether or not this
11 determination has a material financial impact upon all of
12 the claimants.

13 MR. MILLER: Well again, Your Honor, we don't know
14 that for certain.

15 THE COURT: Okay.

16 MR. MILLER: But obviously if they -- if they
17 sought to have some late filing in the LBI proceeding that
18 would be a matter with the LBI SIPA trustee and the Court to
19 deal with.

20 THE COURT: Okay.

21 MR. MILLER: I'd be happy to answer any questions,
22 otherwise that's all I have.

23 THE COURT: I really don't have any questions.

24 This is for all intents and purposes a replay of
25 the very same argument that took place toward the end of the

1 calendar on November 22 when we dealt with questions of
2 standing of these claimants to pursue claims against LBHI
3 under theories of alter ego liability, veil piercing, or
4 other comparable claims of potential liability of LBHI for
5 the acts of LBI.

6 At that time I made various statements from the
7 bench indicating that employees of LBI, or for that matter
8 any claimants in the LBI case, would lack standing to pursue
9 such claims in the LBHI case in light of the separate nature
10 of those proceedings.

11 Additionally, having reviewed the papers submitted
12 by the plan administrator in connection with today's hearing
13 I'm satisfied that as a matter of settled Second Circuit law
14 these individual claimants lack standing not only because
15 the claims, if any, would belong to the trustee in the SIPA
16 case of LBI, but also a settlement agreement between the LBI
17 estate and the LBHI estate has been approved by the Court
18 that clearly resolves all issues of alter ego and veil
19 piercing liability that might otherwise have been asserted
20 by that estate.

21 Under the circumstances as a matter of law all of
22 these claimants lack standing and their claims are
23 disallowed.

24 MR. MILLER: Thank you for your time, Your Honor.

25 If I might have just a moment of -- for personal

1 state myself I hope perhaps I will see you on the 28th, if I
2 don't I want to express my personal appreciation for the
3 time and attention and guidance that you have provided to
4 all of us, to the creditors of the LBHI and its related
5 estates, and to wish you well, Your Honor.

6 THE COURT: Thank you so much, Mr. Miller, the
7 same to you, and have a great holiday.

8 MR. MILLER: Thank you, Your Honor.

9 MR. HORWITZ: Good morning, Your Honor, Maurice
10 Horwitz, Weil, Gotshal & Manges on behalf of Lehman Brothers
11 Holdings Inc.

12 The last item on the agenda this morning is the
13 motion of -- I'm going attempt to pronounce it -- EFETnet
14 B.V., it's an authorized late-filed proof of claim and/or
15 permitted amendment of informal proof of claim against
16 Lehman Brothers Commodity Services, Inc. I'll turn the
17 podium over to movants.

18 THE COURT: Maybe it's EFETnet.

19 MR. HORWITZ: EFETnet?

20 THE COURT: I don't know, but maybe it is. That's
21 how I would pronounce it.

22 MR. MICHAELSON: It's EFETnet actually, Your
23 Honor.

24 THE COURT: EFETnet?

25 MR. MICHAELSON: Good morning, Your Honor, Rich

1 Michaelson of Rich Michaelson Magaliff Moser. We represent
2 the movant in this case.

3 The movant is indisputably a creditor of Lehman
4 Brothers Commodity Services, Inc.

5 The proof of claim filed in this case was filed on
6 a preprinted form that was provided to EFETnet, which is a
7 foreign entity. The proof --

8 THE COURT: I read the papers.

9 MR. MICHAELSON: You did?

10 THE COURT: And I understand what's going on here.
11 A couple of questions.

12 MR. MICHAELSON: Yes.

13 THE COURT: Why did it take four years to present
14 the motion for a late-filed claim? That's question one.

15 MR. MICHAELSON: Yes.

16 THE COURT: Question two, it's a foreign entity
17 but it's in Amsterdam, the Netherlands, a very sophisticated
18 jurisdiction --

19 MR. MICHAELSON: Correct.

20 THE COURT: -- and English is basically a second
21 language there. This enterprise knew that it was doing
22 business with Lehman Brothers Commodity Services --

23 MR. MICHAELSON: Correct.

24 THE COURT: -- not doing being with Lehman
25 Brothers Inc.

1 I don't understand how people who are obviously
2 sophisticated could have made the mistake in understanding
3 who that contract counterparty was.

4 MR. MICHAELSON: Uh-huh.

5 THE COURT: And finally, I don't understand how
6 you overcome the fact that there is an amended declaration
7 from Epiq clarifying that there was in fact a mistake made,
8 the mistake was corrected, and the proof of claim was mailed
9 to the proper address in the Netherlands, which is pretty
10 hard to overcome.

11 MR. MICHAELSON: Well, all of that is correct,
12 Your Honor. Let me respond, and much of this is addressed
13 in a declaration of Mr. Hugh Brunswick.

14 There was a presumption, an incorrect presumption,
15 that if a preprinted form was received addressed to them
16 that it was intended that that would reflect claims against
17 not only LBI, which was the name that appeared at the top of
18 the page, but affiliates or subsidiaries or companies that
19 were all part of some larger or reorganization process.

20 Now there is no question that that was an
21 incorrect presumption. Our submission is it was a
22 reasonable presumption, and I appreciate the fact that these
23 are sophisticated individuals, these are not people without
24 knowledge of the financial industry, nevertheless this was
25 the presumption they made.

1 And I would add to that the notion that there is
2 some -- to the extent that there was a form provided that
3 had the incorrect name -- debtor name on it I believe
4 there's some culpability here on the part of the debtor in
5 transmitting a form that had the name LBI rather than the
6 name of the correct debtor to this particular claimant.

7 THE COURT: If I could just break in and give you
8 my immediate reaction to that argument.

9 MR. MICHAELSON: Certainly.

10 THE COURT: These are different proceedings
11 altogether, and as you just heard, and I'm sure as you
12 independently know, the LBI estate is being separately
13 administered under the provisions of the SIPA statute, the
14 LBHI bankruptcy cases have been separately administered
15 under a Chapter 11, and I just ruled from the bench that
16 claimants in the LBI case have no standing in the LBHI case
17 under any theories of alter ego liability or veil piercing
18 or other kinds of domination and control.

19 So the notion that a properly addressed notice of
20 bar date from one estate somehow is culpable is a curious
21 assertion. I don't think there's any culpability here, it's
22 just what happened in this case. And in fact --

23 MR. MICHAELSON: Right.

24 THE COURT: -- on a worldwide basis there were
25 notices of the obligation to file proofs of claim --

1 MR. MICHAELSON: Uh-huh.

2 THE COURT: -- in the SIPA case, and notices of
3 the obligation to file proofs of claim in the Chapter 11
4 cases. It went out to many of the same parties because of
5 the nature of the transactions within the Lehman family.

6 MR. MICHAELSON: Your Honor, that is very clear
7 from my involvement in the case. As you know I'm involved
8 in other matters.

9 THE COURT: I know you are.

10 MR. MICHAELSON: I'm acutely aware of these
11 distinctions. I think these distinctions are sometimes
12 taken for granted perhaps by those of us who are involved in
13 the case, but others who are less familiar with it would not
14 necessarily be able to make the distinctions quite as
15 easily.

16 And I might also add that to the extent that there
17 was something that was received and received by the wrong
18 entity, while there is no affirmative duty to then say this
19 belongs in box B rather than box A, I do think that there is
20 a certain equity involved in this issue.

21 The lawyers who are involved this these cases are
22 involved in both cases to some extent. There's a cross
23 over, there's much -- a lot of communication and many
24 counsel, but I think that fairness would dictate that if a
25 claim is obviously filed in the wrong case and it's known

1 that there'd be some duty. Now it's not an affirmative
2 duty, but some duty to say we're sorry but you must have
3 been mistaken, this doesn't belong here.

4 Now this is an administratively complex case,
5 counsel for the debtor had so many things that they had to
6 deal with that perhaps it could be argued that that
7 shouldn't be the responsibility. I'm doing what -- I always
8 prefer to argue the law, but in this particular case I'm
9 relegated to argue the equity, and I'm hoping that the Court
10 would recognize that under these circumstances the claimant
11 did what it thought it should do. It was mistaken, it was
12 received, and there's ultimately no prejudice to the estate.

13 THE COURT: But can you comment at all -- I mean
14 this is coming up pretty late in the -- the game. I mean
15 it's five and a third years since the commencement of both
16 the LBHI case and the SIPA case for LBI. The Lehman
17 bankruptcy as a global event is notorious, particularly in
18 the Netherlands, where Lehman Brothers Treasury was a very
19 significant affiliate in proceedings domestically within
20 that country.

21 I can't understand if we're dealing with an
22 excusable negligent standard how you deal with what seems to
23 be an unconscionable long delay quite apart from all the
24 other issues that are present here, including the fact that
25 there is an affidavit of service --

1 MR. MICHAELSON: Uh-huh.

2 THE COURT: -- indicating that service was in fact
3 made in the Netherlands of the bar date notice.

4 MR. MICHAELSON: That is true, Your Honor, and
5 that's indisputable.

6 The only explanation I can provide to you is the
7 explanation provided in Mr. Brunswick's declaration, which
8 is once having filed the claim there was a presumption, it's
9 proven to be an unfortunate false presumption, that that was
10 all that needed to be done and it was simply a matter of
11 time of waiting to either be paid or to have Lehman respond.
12 Beyond that there's no -- there's no other explanation.

13 THE COURT: All right.

14 MR. MICHAELSON: It's really quite that simple.

15 THE COURT: Okay. I take it you are familiar with
16 my decision from I think it's 2010 dealing with excusable
17 neglect standards particularly in the context of the Lehman
18 case?

19 MR. MICHAELSON: I am, Your Honor, yes.

20 THE COURT: All right, fine.

21 MR. MICHAELSON: I'm familiar with the history of
22 the case and I'm aware of that.

23 THE COURT: Okay, fine. Thank you.

24 MR. MICHAELSON: Okay.

25 MR. HORWITZ: Good morning, Your Honor, Maurice

1 Horwitz, Weil, Gotshal & Manges on behalf of Lehman Brothers
2 Holdings Inc. as the plan administrator in these cases on
3 behalf -- who acts on behalf of LBCS.

4 Your Honor, I think as this Court has acknowledged
5 or eluded to the movant has not rebutted the presumption of
6 receipt of the bar date notice. The Court eluded to the
7 corrected affidavit of service of Herb Baer, which is ECF
8 No. 93995, which states that the movant was served at its
9 address in the Netherlands in the City of Amsterdam.

10 The Courts in the Second Circuit require clear and
11 convincing evidence of an objective nature to overcome the
12 presumption of delivery. The movant has not provided this
13 evidence.

14 As we state in your papers the Court -- the Second
15 Circuit -- courts in the Second Circuit require more than a
16 mere denial of receipt.

17 Notably, Your Honor, the declaration of Hugh
18 Brunswick, which was submitted in support of the movant's
19 motion, barely even rises to the level of denying receipt.
20 In fact it states at paragraph 6 of the declaration, which
21 is ECF No. 41546, that Mr. Brunswick has no recollection or
22 record of receiving any proof of claim notice, but as he
23 says, even if I had received separate notice from the
24 debtors I most likely would have discarded it on the
25 apparently erroneous assumption that EFETnet sincerely

1 believed that it had already complied by filing a proof of
2 claim against LBI.

3 In other words, Your Honor, the movant admits in
4 fact states in paragraph 1 of its reply it cannot definitely
5 rule out the possibility that notice may have arrived and
6 acknowledges that the presumption of receipt is attendant to
7 the corrected affidavit of Mr. Herb Baer.

8 With respect to the Pioneer factors, Your Honor,
9 the only argument the movant is left with is after a delay
10 of four years is that it assumed that their filing a proof
11 of claim against LBI was sufficient to preserve its rights
12 against LBCS.

13 Your Honor just eluded to the Court's decision --
14 recorded decision from 2010 in which this Court stated:

15 "Neglect in filing a claim before the expiration
16 of a clear bar date is excusable when the creditor, after
17 conducting a reasonable amount of diligence, is justifiably
18 confused or uncertain as to whether a particular transaction
19 giving rise to a claim is or is not subject to the bar date
20 order."

21 A reasonable amount of diligence, Your Honor,
22 presumes at a bare minimum that a creditor reads the bar
23 date notice that is served upon it.

24 In this case a reasonable amount of diligence
25 would include reading the contract that allegedly forms the

1 basis of the movant's claim or asserted claim and noting
2 that the counterparty, as this Court pointed out, is LBCS
3 and not LBI.

4 A reasonable amount of diligence requires more
5 than merely assuming that filing a proof of claim against a
6 completely separate entity in a separately administered case
7 is sufficient to preserve its rights.

8 Movant admits that it conducted no diligence at
9 all and has provided no evidence that would support a
10 finding of excusable neglect.

11 Finally, Your Honor, as we state in our papers,
12 the proof of claim filed by movant against LBI cannot be
13 treated as an informal proof of claim, and the debtors in
14 this case could not have, as the movant just suggested --
15 movant's counsel just suggested, move the box from A to B
16 because it fails to meet the first critical requirement for
17 that form of relief.

18 As noted in our papers the requirement is that the
19 purported evidence of a claim be filed in the Bankruptcy
20 Court and become part of the judicial record.

21 The proof of claim in this case never became part
22 of the record because these Chapter 11 cases are separately
23 administered cases.

24 This document cannot evidence the claimant's
25 intent to hold LBCS liable, the fourth requirement for

1 finding that a document is an informal proof of claim,
2 because there's no reason that LBCS would ever have known
3 about the claimant's intent.

4 Here LBI's liquidation is a separately
5 administered case and the claims register in that case was
6 not even publicly available to anyone outside of the LBI
7 estate, including LBCS until June of 2013. That's to say
8 that none of the debtors, including LBCS, had any insight
9 into what claims had been filed against LBI. As such
10 there's no way LBCS could have ever known that the movant
11 intended to hold it liable for any debt.

12 LBI has only recently begun focusing its efforts
13 on the claims that were filed against it, Your Honor. We
14 don't know how many other claimants will discover after four
15 or five or six years that their claims should have been
16 filed in these Chapter 11 cases as opposed to LBI, and for
17 these reasons, Your Honor, I think that in addition to the
18 reason for the delay the factor of prejudice to the debtors
19 is a significant one here.

20 A finding in favor of the movant here would
21 significantly prejudice the debtors' endeavors to administer
22 the claims that were filed in these cases. That impact at
23 this time can't be quantified and poses too great a risk.

24 For these reasons, Your Honor, and for the
25 arguments set forth in the plan administrator's objection to

1 the motion, which is at ECF 40545, the plan administrator
2 requests that the Court deny the motion with prejudice.

3 THE COURT: Thank you.

4 Any further comment?

5 MR. MICHAELSON: No further comment, Your Honor.

6 THE COURT: All right.

7 This is one in a long line of claimants that have
8 sought permission to have late-filed claims deemed timely
9 for purposes of participating in distributions from the LBHI
10 and related debtors Chapter 11 cases.

11 Not only is this one the latest, but it is also
12 the least. This is a situation in which notice of the bar
13 date is presumed to have been given and received based upon
14 Mr. Baer's affidavit and where the claimant had actual
15 knowledge that it was dealing with Lehman Brothers Commodity
16 Services and not with Lehman Brothers Inc.

17 Moreover, the presumption or assumption that a
18 proof of claim filed in the LBI SIPA case in effect took
19 care of all claims against related parties was a
20 fundamentally flawed presumption.

21 The delay in presenting this motion is inexcusable
22 and may be explained by the fact that in relative terms the
23 claim at issue here is a very small one. Not only is it
24 small in the context of the claims in this bankruptcy case,
25 but it may also be relatively inconsequential to the

1 claimant itself. This is speculation, but that could be an
2 explanation for why greater attention was not paid to the
3 filing of the proof of claim against LBCS.

4 I believe that the published decision of the Court
5 relating to excusable neglect applies here with equal force
6 and that there is no equitable ground for an exception.

7 So under the circumstances this motion for leave
8 to file a late claim is denied.

9 There's nothing more for today then. We're
10 adjourned.

11 MR. MICHAELSON: Off the record, Your Honor, best
12 of luck.

13 THE COURT: Thanks a lot, appreciate it.

14 (Whereupon the designation of record was concluded at
15 10:40 AM)

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I N D E X

RULINGS

Page Line

Thirteenth Application of Hughes Hubbard &

Reed LLP for Allowance of Interim

Compensation for Services Rendered and

Reimbursement of Actual and Necessary

Expenses Incurred from March 1, 2013 through

June 30, 2013 [LBI ECF No. 7481]

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Debtors' One Hundred Seventeenth Omnibus

Objection to Claims [ECF No. 15363]

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Debtors' Two Hundred Fifty-Fourth Omnibus

Objection to Claims [ECF No. 25059]

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Debtors' Two Hundred and Sixty-Seventh

Omnibus Objection to Claims [ECF no. 26087]

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Four Hundred Twenty-Ninth Omnibus Objection

to Claims [ECF No. 39355]

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Motion of EFETnet B.V. to Authorize

Late-Filed Proof of Claim and/or Permit

1 Amendment of Informal Proof of Claim Against
2 Lehman Brothers Commodity Services, Inc.

3 [ECF No. 40004]

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn
South

Digitally signed by Dawn South
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AAERT Certified Electronic Transcriber CET**D-408

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Date: December 20, 2013